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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 TRUSTEES OF THE OPERATING
8 ENGINEERS PENSION TRUST, *et al.*,

9 Plaintiffs,

v.

10 DIVERSIFIED CONCRETE CUTTING, INC.,
11 *et al.*,

12 Defendants.

Case No. 2:17-cv-02686-APG-GWF

ORDER

13 This matter is before the Court on Plaintiffs' Motion for Order to Show Cause (ECF No.
14 26), filed on July 3, 2018. To date, Defendant Mercurio has not responded to Plaintiffs' Motion
15 for Order to Show Cause. A hearing in this matter was conducted on July 26, 2018.

16 On May 11, 2018, Plaintiffs filed their motion for judgment debtor exam (ECF No. 17) and
17 on May 15, 2018, the Court granted their motion. *See* ECF No. 19. The Court ordered Defendant
18 Mercurio to appear for a judgment debtor examination on June 22, 2018. Defendant Mercurio did
19 not appear for the judgment debtor examination as ordered. Plaintiffs represent that Defendant
20 Mercurio has not contacted them to explain his failure to appear for the examination.

21 Parties are required to follow this Court's orders. *See* Local Rule ("LR") IA 11-8; Fed. R.
22 Civ. Pro. 16(f). LR IA 11-8 provides the Court with authority to impose "any and all appropriate
23 sanctions on an attorney or party" that fails to comply with any order of this court. The Court may
24 exercise discretion in fashioning the appropriate sanctions for violations of a court order. *Official*
25 *Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1396 (9th Cir.1993). *Von Brimer v. Whirlpool Corp.*,
26 536 F.2d 838, 844 (9th Cir.1976). The Court considers the objective of Rule 16(f) to deter conduct
27 that "unnecessarily consumes the Court's time and resources that could have been more
28 productively utilized by litigants willing to follow the Court's procedures." *Martin Family Trust*,

1 186 F.R.D. at 603. The Court also considers the resources wasted by the parties due to their
2 violations of the court's orders. *Hologram USA, Inc. v. Pulse Evolution Corp.*, 2015 WL 5165390,
3 at *5 (D. Nev. Sept. 3, 2015), Fed. R. Civ. P. 16(f)(2).

4 Defendant failed to appear for his judgment debtor exam, failed to respond to Plaintiffs'
5 Motion for Order to Show Cause, and failed to appear for the July 26, 2018 hearing. The Court,
6 therefore, grants Defendant's Motion for Order to Show Cause and awards Plaintiffs reasonable
7 costs and attorney's fees incurred in preparing and filing their Motion for Order to Show Cause.
8 The Court will, however, allow Defendant Mercurio another opportunity to appear for his
9 judgment debtor examination. Defendant shall appear at the law offices of Reese Kintz, 201 W.
10 Liberty St., Suites 203-204, Reno, NV 89501 on **August 21, 2018** at 10:00 a.m. to be sworn in for
11 a judgment debtor examination and to answer questions concerning property subject to the
12 ownership and control of Kenneth Mercurio. **The Court further warns Defendant that if he**
13 **fails to appear for his judgment debtor examination, the Court will issue a bench warrant**
14 **for his arrest.**

15 Defendant Mercurio is instructed to bring with him to him to the judgment debtor
16 examination the following documents under his control or the control of his agents:

17 a. All financial statements prepared by or on behalf of Mercurio from January 1, 2017, to
18 the present.

19 b. All original monthly bank statements of Mercurio from January 1, 2017, to the present.

20 c. All original savings account pass books, certificates of deposit, and trust certificates in
21 the name of Mercurio January 1, 2017, to the present.

22 d. All canceled checks drawn on any account established in the name of Mercurio from
23 January 1, 2017, to the present.

24 e. All original negotiable instruments and negotiable securities in the name of Mercurio
25 from January 1, 2017, to the present.

26 f. All evidence or other memoranda of any ownership interest of Mercurio in any
27 corporation, partnership, unincorporated association or any business organized or conducted for
28 the production of income from January 1, 2017, to the present.

1 g. All evidence or other memoranda of any income received by Mercurio January 1, 2017,
2 to the present, to include but not limited to tax returns, insurance proceeds, or repayment of loans.

3 h. All evidence or other memoranda of any employer, or place of work or employment of
4 Mercurio from January 1, 2017, to the present, including but not limited to contracts, invoices,
5 billings, vouchers or payments.

6 i. All evidence of any ownership interest of Mercurio to include but not limited to, bills of
7 sale, pink slips or any other record or title, in any motor vehicle, airplane, boat, equipment or
8 machinery, from January 1, 2017, to the present.

9 j. All evidence of any debts or repayments owed by Mercurio, to include but not limited
10 to, those arising from loans or judgments from January 1, 2017, to the present.

11 k. Any and all evidence or other memoranda indicating that Mercurio was either a plaintiff
12 or a defendant in any lawsuit from January 1, 2017, to the present.

13 l. Any and all evidence or memoranda indicating that Mercurio received any judgment,
14 award, bequest or devise in any lawsuit or other court action from January 1, 2017, to the present.

15 m. Any and all evidence or memoranda indicating any ownership interest of Mercurio in
16 any patent, invention, trade name, or copyright.

17 n. Any and all evidence or memoranda indicating an ownership interest of Mercurio in any
18 real property or developments on real property.

19 o. Any and all evidence of the sale(s) of any real or personal property of Mercurio from
20 January 1, 2017, to the present.

21 p. Any and all loan applications filled out by Mercurio since January 1, 2017.

22 q. Copies of all documents evidencing the sale or transfer of any assets of Mercurio from
23 January 1, 2017, to the present.

24 r. Any and all documents evidencing any federal or State tax liability of Mercurio.

25 s. Original cash disbursement journals and/or check registers maintained in connection
26 with any business of Mercurio from January 1, 2017, to the present.

27 t. Federal income tax returns of Mercurio for the year 2017 to the present.

28 Accordingly,

1 **IT IS HEREBY ORDERED** that Defendant Mercurio shall appear at the law offices of
2 Reese Kintz, 201 W. Liberty St., Suites 203-204, Reno, NV 89501 on **August 21, 2018** at 10:00
3 a.m. to be sworn in for a judgment debtor examination and to answer questions concerning
4 property subject to the ownership and control of Kenneth Mercurio. **Failure to appear will result**
5 **in the issuance of a bench warrant for Defendant's arrest.**

6 **IT IS FURTHER ORDERED** that Plaintiffs shall serve a copy of this Order on Defendant
7 Mercurio no later than **August 6, 2018**.

8 **IT IS FURTHER ORDERED** that Plaintiffs' Motion for Order to Show Cause (ECF No.
9 26) is **granted**.

10 **IT IS FURTHER ORDERED** that the Court awards Plaintiffs' reasonable costs and
11 attorney's fees incurred in preparing and filing their Motion for Order to Show Cause (ECF No.
12 26).

13 **IT IS FURTHER ORDERED** that Counsel for Plaintiffs shall no later than **August 10,**
14 **2018** serve and file a memorandum, supported by affidavit of counsel, establishing the amount of
15 attorneys' fees and costs incurred as addressed in this order. The memorandum shall provide a
16 reasonable itemization and description of work performed, identify the attorney(s) or staff
17 member(s) performing the work, the customary fee of the attorney(s) or staff member(s) for such
18 work, and the experience, reputation and ability of the attorney performing the work. The
19 attorney's affidavit shall authenticate the information contained in the memorandum, provide a
20 statement that the bill has been reviewed and edited, and a statement that the fees and costs charged
21 are reasonable.

22 Defendant Mercurio shall have fourteen (14) days from service of the memorandum of
23 costs and attorney's fees, up to and including **August 24, 2018**, in which to file a responsive
24 memorandum addressing the reasonableness of the costs and fees sought, and any equitable

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1 considerations deemed appropriate for the court to consider in determining the amount of costs
2 and fees which should be awarded.

3 Dated this 27th day of July, 2018.

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6 GEORGE FOLEY, JR.
7 UNITED STATES MAGISTRATE JUDGE
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